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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JOAQUIN MURRIETTA ) Civil No.13-1457-BTM(WVG)  
12 MARTINEZ, )  
13 )  
14 ) Petitioner, ) REPORT AND RECOMMENDATION  
15 ) v. ) RE DISMISSAL OF PETITION  
16 )  
17 ) CAPT. PENA, )  
18 )  
19 ) Respondent. )  
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17 On August 19, 2013, Petitioner Joaquin Murrietta  
18 Martinez ("Petitioner") filed a First Amended Petition for  
19 Writ of Habeas Corpus ("FAP"). On December 27, 2013,  
20 Respondent Capt. Pena ("Respondent") filed an Answer to  
21 the FAP and lodged with the Court the state court record  
22 pertaining to Petitioner's conviction. The Answer indi-  
23 cated that Petitioner failed to exhaust claim nos. 3 and  
24 4 in his FAP. The Court reviewed the state court record  
25 and found that Respondent was correct.

26 On January 2, 2014, this Court issued a Notice  
27 Regarding Possible Dismissal of Petition For Failure To  
28 Exhaust State Court Remedies ("Notice"). In the Notice,

1 the Court found that Petitioner failed to exhaust his  
2 state court remedies pertaining to all of the claims in  
3 his Petition. Therefore, the Court gave Petitioner four  
4 options:

- 5 (1) file a supplemental memorandum stating how all of  
6 his claims have been exhausted in state court; or
- 7 (2) dismiss his petition in order to exhaust all state  
8 court remedies; or
- 9 (3) formally and permanently abandon all unexhausted  
10 claims; or
- 11 (4) file a motion to stay the federal proceedings.

12 Petitioner was ordered to exercise one of these  
13 options on or before February 3, 2014. At Petitioner's  
14 request, the February 3, 2014 date was extended to March  
15 3, 2014. At Petitioner's request, the March 3, 2014 date  
16 was extended to April 3, 2014. At Petitioner's request,  
17 the April 3, 2014 date was extended to May 9, 2014.

18 The Court indicated in its January 2, 2014 Notice  
19 that if Petitioner failed to exercise one of the four  
20 options noted above, by February 3, 2014 (later extended  
21 to May 9, 2014), then it would still be faced with a  
22 petition that contains unexhausted claims and would  
23 therefore have to recommend dismissal of Petitioner's  
24 case.

25 As of the date of this Report and Recommendation,  
26 the Court has not received a written response from Peti-  
27 tioner indicating which option he chooses. Accordingly,  
28 this Court RECOMMENDS that Petitioner's First Amended

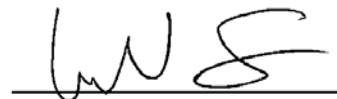
1 Petition for Writ of Habeas Corpus be DISMISSED without  
2 prejudice to Petitioner's refiling in the future a peti-  
3 tion which contains only exhausted claims.

4 This Report and Recommendation is submitted to the  
5 United States District Court Judge assigned to this case,  
6 pursuant to the provisions of 28 U.S.C. §636(b)(1).

7 IT IS ORDERED that no later than June 20, 2014, any  
8 party may file written objections with the court and serve  
9 a copy on all parties. The document should be captioned  
10 "Objections to Report and Recommendation."

11 IT IS FURTHER ORDERED that any reply to the objec-  
12 tions shall be served and filed no later than July 7,  
13 2014. The parties are advised that failure to file objec-  
14 tions within the specified time may waive the right to  
15 raise those objections on appeal of the Court's order.  
16 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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19 DATED: May 20, 2014

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22 Hon. William V. Gallo  
23 U.S. Magistrate Judge  
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